

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

UNITED STATES OF AMERICA,

Plaintiff,

v.

CRIMINAL NO. 22-212 (ADC)

JOSE M. MARTINEZ-HERNANDEZ,

Defendant.

MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION
RE: RULE 11(c)(1)(B) GUILTY PLEA HEARING

I. Procedural Background:

On May 17, 2022, defendant Jose Martinez-Hernandez was charged in a two-count indictment with possession with intent to distribute cocaine and possession of a firearm in furtherance of drug trafficking. (Docket No. 10). He agreed to plead guilty to Counts One and Two of said indictment.

Count One specifically charges Mr. Martinez-Hernandez with distributing over 500 grams of cocaine on or about May 11, 2022, in violation of 21 U.S.C. § 841(a)(1). And Count Two charges him knowingly and intentionally possessing a firearm on May 11, 2022, in furtherance of a drug trafficking crime violation of 18 U.S.C. § 924(c).

Defendant appeared before me, assisted by the court interpreter, on October 1, 2024, after the Rule 11 hearing was referred to me by the Presiding District Judge. *See United States v. Woodard*, 387 F.3d 1329 (11th Cir. 2004) (magistrate judge had

1 authority to conduct Rule 11 guilty plea hearing with consent of defendant). He was
2 advised of the purpose of the hearing and placed under oath with instructions that his
3 answers must be truthful lest he subject himself to possible charges of perjury or making
4 a false statement.

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6 **II. Consent to Proceed Before a Magistrate Judge:**

7 Defendant was provided with a Waiver of Right to Trial by Jury form, which he
8 signed.¹ He was advised of his right to hold all proceedings, including the change of plea
9 hearing, before a district court judge. He received an explanation of the differences
10 between the scope of jurisdiction and functions of a district judge and a magistrate judge.
11 He was informed that if he elected to proceed before me, a magistrate judge, that I would
12 conduct the hearing and prepare a report and recommendation, subject to review and
13 approval of the District Judge. The defendant then voluntarily consented to proceed
14 before me.

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16 **III. Proceedings Under Rule 11 of the Federal Rules of Criminal**
17 **Procedure:**

18 Rule 11 of the Federal Rules of Criminal Procedure governs the acceptance of
19 guilty pleas to federal criminal violations. Pursuant to Rule 11, in order for a plea of guilty
20 to constitute a valid waiver of the defendant's right to trial, the guilty plea must be
21 knowing and voluntary. *United States v. Hernandez-Wilson*, 186 F.3d 1, 5 (1st Cir. 1999).
22 "Rule 11 was intended to ensure that a defendant who pleads guilty does so with an
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27 ¹ The form entitled Consent to Proceed Before a United States Magistrate Judge in a Felony Case for
28 Pleading Guilty (Fed. R. Crim. P. 11) and Waiver of Jury Trial, signed and consented by both parties is
made part of the record.

1 ‘understanding of the nature of the charge and consequences of his plea.’” *United States*
2 *v. Cotal-Crespo*, 47 F.3d 1, 4 (1st Cir. 1995) (quoting *McCarthy v. United States*, 394 U.S.
3 459, 467 (1969)). There are three core concerns in a Rule 11 proceeding: 1) absence of
4 coercion; 2) understanding of the charges; and 3) knowledge of the consequences of the
5 guilty plea. *Cotal-Crespo*, 47 F.3d at 4 (citing *United States v. Allard*, 926 F2d 1237, 1244
6 (1st Cir. 1991)).
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8 **A. Competence to Enter a Guilty Plea**

9 I questioned the defendant about his age, education, employment, history of any
10 treatment for mental illness or addiction, use of any medication, drugs, or alcohol, and
11 his understanding of the purpose of the hearing, all in order to ascertain his capacity to
12 understand, answer and comprehend the change of plea colloquy. I confirmed that the
13 defendant received the indictment and fully discussed the charges with his attorney and
14 was satisfied with the advice and representation he received. In addition, I further
15 inquired whether defendant’s counsel or counsel for the government had any doubt as to
16 his competency to plead, receiving answers from both that the defendant was competent
17 to enter a plea. After considering the defendant’s responses, and observing his demeanor,
18 a finding was made that Mr. Martinez-Hernandez was competent to plead and fully
19 aware of the purpose of the hearing.
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22 **B. Maximum Penalties**

23 Upon questioning, the defendant expressed his understanding of the maximum
24 and minimum penalties prescribed by statute for the offenses to which he was pleading
25 guilty. As to Count One, and as charged, he was exposed to a term of imprisonment of
26 not less than five (5) years, up to forty (40) years, a fine not to exceed five million dollars
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1 (\$5,000,000.00), and a supervised release term of at least four (4) years in addition to
2 any term of incarceration. However, based on the amount of narcotics stipulated in the
3 plea agreement (at least 400 grams but not less than 500 grams of cocaine), the
4 applicable penalties are as follows: a term of imprisonment of not more than twenty (20)
5 years, a fine not to exceed one million (\$1,000,000.00) dollars, and a term of supervised
6 release of at least three (3) years.

8 As to Count Two, defendant understood that he was exposed to a term of
9 imprisonment of not less than five (5) years and up to life, to be served consecutively to
10 any sentence imposed as to any other count of conviction, a fine not to exceed two
11 hundred and fifty thousand dollars (\$250,000.00), and a supervised release term of up
12 to five (5) years in addition to any term of incarceration.

14 The defendant also understood that a Special Monetary Assessment of \$100.00
15 would be imposed, to be deposited in the Crime Victim Fund, pursuant to Title 18, United
16 States Code, Section 3013(a). The court explained the nature of supervised release and
17 the consequences of revocation. The defendant indicated that he understood the
18 maximum penalties for Count One and Two and the potential consequences of the guilty
19 plea.
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21 C. Plea Agreement

22 Mr. Martinez-Hernandez was shown his plea agreement, and the plea agreement
23 supplement, which are part of the record, and identified his initials and signatures. He
24 confirmed that he had the opportunity to read and discuss the plea agreement with his
25 attorney before he signed it, that it represented the entirety of his understanding with
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1 the government, that he understood its terms, and that no one had made any other or
2 different promises or assurances to induce him to plead guilty.

3 The defendant was then admonished, pursuant to Fed. R. Crim. P. 11(c)(1)(B), and
4 expressed his understanding that the terms of the plea agreement are merely
5 recommendations to the court, and that the district judge who will preside over the
6 sentencing hearing can reject the recommendation without permitting the defendant to
7 withdraw his guilty plea, and impose a sentence that is more severe than the defendant
8 might anticipate. The defendant was specifically informed that the court, after
9 considering the applicable Sentencing Guidelines, could impose a sentence different
10 from any estimate in the plea agreement or provided by his attorney, and that the court
11 had the authority to impose a sentence that is more severe or less severe than the
12 sentence called for by the Sentencing Guidelines. The defendant was advised, and
13 understood, that the Sentencing Guidelines are no longer mandatory and are thus
14 considered advisory, and that during sentencing the court will consider the sentencing
15 criteria found at Title 18, United States Code, Section 3553(a).

16 The defendant was advised that under some circumstances he or the government
17 may have the right to appeal the sentence the court imposes, but that pursuant to the
18 plea agreement the defendant will waive his right to appeal both his sentence and his
19 conviction if the court adopts the plea agreement and sentences him according to its
20 terms and conditions.

21 **D. Waiver of Constitutional Rights**

22 Mr. Martinez-Hernandez was specifically advised that he has the right to persist
23 in a plea of not guilty, and if he does so persist that he has the right to a speedy and public
24 trial.

1 trial by jury, or trial before a judge sitting without a jury if the court and the government
2 so agree; that at trial he would be presumed innocent and the government would have to
3 prove his guilt beyond a reasonable doubt; that he would have the right to the assistance
4 of counsel for his defense, and if he could not afford an attorney the court would appoint
5 one to represent him throughout all stages of the proceedings; that at trial he would have
6 the right to hear and cross examine the government's witnesses, the right to decline to
7 testify unless he voluntarily elected to do so, and the right to the issuance of subpoenas
8 or compulsory process to compel the attendance of witnesses to testify. He was further
9 informed that if he decided not to testify or put on evidence at trial, the failure to do so
10 could not be used against him, and that at trial the jury must return a unanimous verdict
11 before he could be found guilty or not guilty.
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14 The defendant specifically acknowledged understanding these rights and
15 understanding that by entering a plea of guilty there would be no trial and he will be
16 waiving or giving up the rights I explained.
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18 The defendant was informed that parole has been abolished and that any sentence
19 of imprisonment must be served, and that his guilty plea may result in loss of important
20 civil rights, such as the right to vote, to hold public office, to serve on a jury, and to
21 possess a firearm. The defendant confirmed that he understood these consequences of
22 the guilty plea.
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24 **E. Factual Basis for the Guilty Plea**

25 Defendant was read in open court Counts One and Two of the indictment and
26 provided an explanation of the elements of the offense. The meaning of terms used in the
27 indictment was explained. Further, upon questioning, the defendant admitted to facts
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1 constituting all of the elements of the offense charged in Counts One and Two and that
2 the evidence the government had available to establish, in the event defendant elected to
3 go to trial, the defendant's guilt beyond a reasonable doubt.

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5 **F. Voluntariness**

6 The defendant indicated that he was not being forced to plead guilty but was
7 entering such a plea freely and voluntarily because in fact he is guilty, and that no one
8 had threatened him or offered a thing of value in exchange for his plea. He acknowledged
9 that no one had made any different or other promises in exchange for his guilty plea,
10 other than the recommendations set forth in the plea agreement. Throughout the hearing
11 the defendant was able to consult with his attorney.

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13 **IV. Conclusion:**

14 The defendant, by consent, appeared before me pursuant to Rule 11 of the Federal
15 Rules of Criminal Procedure, and entered a plea of guilty as to Counts One and Two of
16 the indictment. After cautioning and examining the defendant under oath and in open
17 court concerning each of the subject matters mentioned in Rule 11, I find that the
18 defendant, Jose Martinez-Hernandez is competent to enter this guilty plea, is aware of
19 the nature of the offense charged and the maximum statutory penalties that it carries,
20 understands that the charge is supported by evidence and a basis in fact, has admitted to
21 the elements of the offense, and has done so in an intelligent and voluntary manner with
22 full knowledge of the consequences of his guilty plea. Therefore, I recommend that the
23 court accept the guilty plea and that the defendant be adjudged guilty as to Counts One
24 and Two of the indictment.
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1 This report and recommendation is filed pursuant to 28 U.S.C. § 636(b)(1)(B) and
2 Rule 72(d) of the Local Rules of this Court. Any objections to the same must be specific
3 and must be filed with the Clerk of Court **within 14 days**. Failure to file timely and
4 specific objections to the report and recommendation is a waiver of the right to appellate
5 review. *See Thomas v. Arn*, 474 U.S. 140, 155 (1985); *Davet v. Maccorone*, 973 F.2d 22,
6 30–31 (1st Cir. 1992); *Paterson-Leitch Co. v. Mass. Mun. Wholesale Elec. Co.*, 840 F.2d
7 985 (1st Cir. 1988); *Borden v. Sec’y of Health & Human Servs.*, 836 F.2d 4, 6 (1st Cir.
8 1987).

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10 **IT IS SO RECOMMENDED.**

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12 In San Juan, Puerto Rico this 1st day of October, 2024.

13 S/Héctor L. Ramos-Vega
14 HÉCTOR L. RAMOS-VEGA
15 UNITED STATES MAGISTRATE JUDGE
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